SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WELLS FARGO BANK, N.A., AS TRUSTEE AND COLLATERAL AGENT, Plaintiff, -against- CHUKCHANSI ECONOMIC DEVELOPMENT AUTHORITY, THE TRIBE OF PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS and CHUKCHANSI FINANCE COMPANY LLC, Defendants.	Index No. Date Purchased: July 17, 2019 **SUMMONS**

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorneys an answer to the complaint in this action within 20 days after the service of this summons, exclusive of the date of the summons, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer or appear, judgment will be taken against you by default for the relief demanded in the complaint.

1. Plaintiff designates New York County as the place of trial. Venue is based on N.Y. C.P.L.R. § 327(b) and New York General Obligations Law § 5-1402 because this action arises out of a contract pursuant to which CEDA, the Tribe and the Affiliated Lender (each as defined below) have agreed to submit to the laws and jurisdiction of the State of New York and which involves obligations arising out of transactions covering in the aggregate not less than one million dollars. In addition, venue is appropriate under C.P.L.R. §§ 501 and 503(a) because CEDA, the Tribe and the Affiliated Lender selected New York County pursuant to Section 13.1

of the relevant Indenture, which is attached as an exhibit to the accompanying complaint, and have agreed not to contest such venue. Further, plaintiff resides in New York County.

2. Defendant Chukchansi Economic Development Authority ("CEDA") is a wholly owned unincorporated enterprise of the Tribe with its principal place of business located in California.

3. Defendant Tribe of the Picayune Rancheria of the Chukchansi Indians is a federally recognized Indian tribe (the "Tribe") that resides in California.

4. Defendant Chukchansi Finance Company LLC (the "Affiliated Lender") is a limited liability company wholly owned by the Tribe, which is organized under the laws of the Tribe and has its principal place of business in California.

Dated: July 17, 2019
New York, New York

LATHAM & WATKINS LLP

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SUPREME COURT OF THE STATE OF NEW YORK
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WELLS FARGO BANK, N.A., AS TRUSTEE AND COLLATERAL AGENT, Plaintiff, -against- CHUKCHANSI ECONOMIC DEVELOPMENT AUTHORITY, THE TRIBE OF PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS and CHUKCHANSI FINANCE COMPANY LLC, Defendants.	Index No. **COMPLAINT**

Plaintiff Wells Fargo Bank, N.A. (the "Trustee" or "Wells Fargo"), acting solely in its capacity as Trustee under that certain Indenture, dated as of May 30, 2012, among the Trustee, CEDA and the Tribe (as defined below), as amended or modified from time to time (the "Indenture") and Collateral Agent under that certain Security Agreement, dated as of May 30, 2012, among the Trustee, CEDA and the other grantors party thereto (the "Security Agreement"), and not in its individual capacity, by its attorneys Latham & Watkins LLP, for its Complaint against Chukchansi Economic Development Authority ("CEDA"), the Tribe of the Picayune Rancheria of the Chukchansi Indians (the "Tribe") and Chukchansi Finance Company LLC (the "Affiliated Lender" and, together with CEDA and the Tribe, the "Defendants"), alleges, on personal knowledge as to the Trustee's actions and upon information and belief as to the actions of others, as follows:

NATURE OF THIS ACTION

1. This case arises from the Defendants' scheme to subordinate over $250 million in secured notes (the "Secured Notes") under the Indenture, and avoid payment obligations to the

holders of the Secured Notes (the "Holders") in perpetuity, by withholding cash meant for payment of the Secured Notes, then creating an affiliate and making a $2 million sham "loan" to itself. This scheme put in motion by the Defendants flagrantly violates numerous agreements among the Tribe, CEDA, the Trustee and the Holders, including the Indenture. The Trustee has tried to resolve this matter without resorting to litigation, but has been rebuffed by the Defendants, and thus has been directed by a majority of the Holders to bring this action to remedy the breaches of the parties' agreements and prevent irreparable harm to the Trustee and Holders.

2. This is not the first time the Trustee and Holders have needed this Court's assistance to avert irreparable harm from the Tribe's and CEDA's breaches of their agreements. In 2012, CEDA issued the Secured Notes that are the subject of this lawsuit to refinance the debt of the Chukchansi Gold Resort & Casino in Coarsegold, CA (the "Casino") and agreed to several "cash controls" to protect the cash serving as collateral for the Holders' investment. CEDA was required to place the Casino's cash and revenues (the "Collateral") in certain accounts (the "Deposit Accounts") held at Rabobank, N.A. ("Rabobank"), over which the Trustee has control in order to protect the Collateral. Starting in February 2013, CEDA began violating cash controls by stockpiling cash outside the Deposit Accounts. CEDA also failed to make a required Secured Note payment in March 2013. CEDA's actions threatened irreparable harm to the operations and financial well-being of the Casino, which is the source of CEDA's cash flow. In July 2013, this Court entered an immediate injunction against CEDA and the Tribe to prevent irreparable harm to the Trustee and Holders. The injunction stabilized the Casino and protected the Holders by, among other things, requiring CEDA to follow the required cash controls.

3. In October 2014, the Tribe engaged in further actions that led federal authorities to shut down the Casino. The Casino, which is the primary source of income for the Tribe, faced a difficult path to re-opening and would require more funding to do so. One of the Holders invested substantial resources to protect the Casino while it lay derelict, and to position the Casino for an eventual re-opening. As a result, federal authorities agreed in December 2015 to permit the Casino's re-opening.

4. CEDA still required $35 million in additional funding to re-open the Casino, but no bank was willing to lend CEDA money given its history of defaults and disdain for its borrowing agreements. Certain Holders agreed to step in and provide the highly risky loans themselves. But the Indenture did not permit additional loans, and certainly not loans that would have been senior to the Secured Notes. The Trustee and the entire group of Holders, however, agreed to amend the Indenture to allow the new loans, and to subordinate their Secured Notes, under very specific conditions as described below. Specifically, in December 2015, the parties agreed to the Second Supplemental Indenture, Re-Opening Credit Agreement, Intercreditor Agreement, Forbearance Agreement and 2015 DACA (collectively, the "Re-Opening Agreements") to govern the new loans (the "Re-Opening Loans") and the relationship among CEDA, the Tribe, the Holders, the Trustee and the lenders providing the Re-Opening Loans (the "Re-Opening Lenders").

5. To protect the Re-Opening Lenders (not CEDA) in the event of further defaults by CEDA, the Forbearance Agreement obligated the Trustee to forbear from exercising remedies for certain Indenture defaults by CEDA (including past defaults yet to be remedied) while the Re-Opening Lenders were still owed money by CEDA. The Re-Opening Lenders were taking significant risks in lending money to CEDA under these circumstances, so in return they were

provided with this assurance that the Holders would not attempt to declare defaults by CEDA and foreclose on their $250 million in Secured Notes or take other enforcement actions while the Re-Opening Lenders were still owed money by CEDA.

6. For their part, the Holders agreed to this arrangement based on explicit conditions documented in the agreements. Given the Holders' substantial investment in the Casino, as well as CEDA's significant credit risk and history of defaults requiring injunctive relief from this Court, the Holders needed to ensure there would be no interference with the Holders' right to payment on the Secured Notes and the Trustee's access to the Collateral. To that end, the Forbearance Agreement provides that forbearance terminates upon CEDA's repayment of the Re-Opening Lenders, unless CEDA consummates a valid "Refinancing" in accordance with the strict terms of the Intercreditor Agreement.

7. The Casino re-opened on December 31, 2015, which would not have been possible without the assistance of the Trustee and Holders. CEDA was required to place the cash from the Casino into the Deposit Accounts and was permitted to withdraw cash to fund the Casino's operations, make payments on the Re-Opening Loans, make certain allowed distributions of cash to the Tribe ("Tribal Distributions") and make semi-annual Secured Note payments with cash left over. But in recent months, the Tribe and CEDA repaid the efforts of the Trustee and Holders by putting in place a scheme (the "Sham Refinancing Scheme") to unlawfully cut off Secured Note payments due under the Indenture and avoid any enforcement of remedies by the Trustee or Holders *forever*.

8. The Sham Refinancing Scheme began with CEDA—as in 2013—stockpiling cash that it was required to place in Deposit Accounts and use to make Secured Note payments under the Indenture. This stockpiling and misuse of cash violated the Indenture and the agreed-upon

cash controls. Then, on March 21, 2019, the Tribe created the Affiliated Lender, which, like CEDA, is wholly owned and controlled by the Tribe. Next, the Affiliated Lender "loaned" $2 million to CEDA, which used the $2 million, plus approximately $12 million in stockpiled cash, to pay off the Re-Opening Loans. The Affiliated Lender then purported to join the existing Intercreditor Agreement. On April 11, 2019, without informing the Trustee, CEDA and the Affiliated Lender purported to enter into a new DACA with Rabobank (the "2019 DACA"), by which the Affiliated Lender claims control over CEDA's deposit accounts with Rabobank. The Trustee did not learn of the 2019 DACA until June 25, 2019.

9. On March 28, 2019, CEDA asserted to the Holders during a public call that the Affiliated Lender had stepped into the shoes of the Re-Opening Lenders, and took the position that, as long as the $2 million loan remained outstanding, the Trustee and Holders were required to continue to forbear on enforcement of their rights under the Indenture in perpetuity. CEDA stated specifically that it undertook this scheme to cease making payments on the Secured Notes after September 30, 2019, and added that it intends to do exactly that. In fact, because it improperly diverted cash from the Deposit Accounts to effect the Sham Refinancing Scheme, CEDA already failed to make a payment due on the Secured Notes on March 30, 2019.

10. In reality, the Sham Refinancing Scheme does not permit CEDA to cease making payments on the Secured Notes in perpetuity. Instead, the scheme violates the parties' agreements and leaves the Trustee and Holders free to exercise remedies for CEDA's past and planned defaults under the Indenture.

11. Specifically, the Trustee and Holders are no longer required to forbear from enforcing their rights under the Indenture because the Forbearance Agreement ceased being effective when CEDA repaid the Re-Opening Lenders, which constituted a "Discharge of Credit

Agreement Obligations" causing forbearance to terminate. Since forbearance is no longer in effect, the Trustee and Holders are free to exercise remedies for CEDA's unquestioned defaults under the Indenture and CEDA's plans to continue defaulting, including by violating cash controls and failing to pay the interest and principal due under the Secured Notes.

12. CEDA has claimed that the Forbearance Agreement prevents the Trustee and Holders from exercising remedies for these defaults, and thus CEDA believes it can refuse with impunity—and forever—to make any more payments due under the Indenture, so long as CEDA's "loan" from its Affiliated Lender remains in place. This is an absurd position that contradicts the plain language of the parties' agreements, the intent of those agreements and every notion of good faith and fair dealing.

13. The Tribe's and CEDA's actions have also satisfied multiple conditions that are each sufficient to trigger a special default known as a "Tribal Default" under the Indenture. The Trustee thus has the right, but not the obligation, to issue a Notice of Tribal Default[1] to Rabobank. Once the Trustee issues a Notice of Tribal Default, CEDA is not permitted to make any distributions to the Tribe. The Trustee does not wish to call a Tribal Default at this time, but needs to have and preserve its right to do so now that multiple triggering conditions have been met.

14. CEDA has flouted cash controls by diverting cash from the Deposit Accounts in the past and has indicated a willingness to continue doing so. CEDA and the Affiliated Lender also seek to control the cash currently in the Deposit Accounts. The Trustee and Holders are at immediate risk of losing this cash collateral forever, as the cash may be distributed to the Tribe or otherwise dissipated, and improperly distributed cash is impossible to track or recover.

[1] Capitalized terms not otherwise defined in this Complaint shall have the meaning ascribed to them in the Indenture and related documents.

Because violations of cash controls cannot be undone, prospective and permanent relief from this Court is needed to prevent their occurrence. The Trustee and Holders are suffering irreparable harm as a result of the Defendants' actions, and require injunctive relief from this Court to prevent any further irreparable harm and return the parties to the status quo before the Defendants engaged in the Sham Refinancing Scheme.

15. The goals of the Trustee and Holders are simple. They want the Casino to continue to operate smoothly, they want CEDA to continue to make permitted Tribal Distributions (unless it becomes necessary to issue a Notice of Tribal Default stopping Tribal Distributions in order to protect the Holders' rights and collateral) and they want CEDA to continue to make Secured Note payments. In other words, with the Re-Opening Loans paid off, the Trustee and Holders want to return to the status quo that existed before those loans were made.

16. What the Trustee and Holders do not want is to have their longstanding right to payment of principal and interest on the Secured Notes impaired forever by Defendants' Sham Refinancing Scheme. The Trustee and Holders should not be worse off than they were prior to the Re-Opening Loans just because Defendants have attempted to take advantage of their goodwill.

17. The Trustee therefore asserts claims against the Defendants As follows:

a. Count I: Breach of the Indenture by all Defendants;

b. Count II: Breach of the Security Agreement by CEDA;

c. Count III: Breach of the Intercreditor Agreement by CEDA;

d. Count IV: Breach of the Forbearance Agreement by CEDA and the Tribe;

e. Count V: Breach of the 2015 DACA by CEDA;

f. Count VI: Breach of the covenant of good faith and fair dealing by CEDA and the Tribe;

g. Count VII: A declaratory judgment that forbearance is no longer in effect for defaults by CEDA and the Tribe under the Indenture and related agreements;

h. Count VIII: A declaratory judgment that CEDA is required to make payments of principal and interest on the Secured Notes as they become due;

i. Count IX: A declaratory judgment that Defendants are obligated to follow all agreed-upon cash controls, including the requirement to place the Casino's cash and revenues into the Deposit Accounts at Rabobank and the requirement not to withdraw cash improperly from the Deposit Accounts;

j. Count X: A declaratory judgment that the 2015 DACA remains valid, while the 2019 DACA and any instructions issued pursuant to it are invalid; and

k. Count XI: A declaratory judgment that conditions sufficient to trigger a Tribal Default under the Indenture have been met, giving the Trustee the right to issue a Notice of Tribal Default to Rabobank.

PARTIES

18. Plaintiff Wells Fargo, not in its individual capacity but acting solely in its capacity as Trustee and Collateral Agent in this action, is a national banking association organized under

the laws of the United States. Its main offices are located at 101 North Phillips Avenue, Sioux Falls, South Dakota.

19. Defendant Tribe of the Picayune Rancheria of the Chukchansi Indians is a federally recognized Indian tribe.

20. Defendant Chukchansi Economic Development Authority is a wholly owned unincorporated enterprise of the Tribe.

21. Defendant Chukchansi Finance Company LLC is a limited liability company that is wholly owned by the Tribe.

JURISDICTION AND VENUE

22. This Court has subject matter jurisdiction over this action under N.Y. Judiciary Law § 140-b and Article VI, § 7 of the Constitution of the State of New York.

23. This Court has personal jurisdiction over the Defendants in this action pursuant to CPLR § 302(a), because certain Defendants conduct business in the state, as described herein, and New York General Obligations Law § 5-1402, because the action arises out of a contract relating to transactions covering in the aggregate not less than one million dollars for which a choice of New York law has been made and which contains a provision whereby the Tribe, CEDA and the Affiliated Lender agree to submit to the jurisdiction of the courts of this State. Section 13.1(c) of the Indenture states, in pertinent part:

> [the Tribe, CEDA, any entity, arm or subunit of the Tribe, and the Guarantors], the Trustee and the Collateral Agent will agree to irrevocably and unconditionally submit, for itself and its property, to the exclusive jurisdiction of the United States District Court, Southern District of New York, and any appellate court from which any appeals therefrom are available (the "New York Federal Courts"), the courts of the State of New York sitting in the City of New York, County of New York, and any appellate court from which any appeals therefrom are available (the "New York State Courts") . . . in any action or proceeding arising out of or relating to any Transaction Document or the transaction contemplated thereby.

Section 8.5.4 of the Forbearance Agreement and Section 8.7(a) of the Intercreditor Agreement contain substantially identical language. Further, under Resolution #2012-78 of the Picayune Rancheria of the Chukchansi Indians, the Tribal Council resolved to waive sovereign immunity in conjunction with its role in obtaining financing for the Casino through the Secured Notes.[2]

24. Venue is proper in this county pursuant to CPLR § 327(b) and New York General Obligations Law § 5-1402 because this action arises out of a contract pursuant to which the Defendants have agreed to submit to the laws and jurisdiction of the State of New York and which involves obligations arising out of transactions covering in the aggregate not less than one million dollars. In addition, venue is appropriate under CPLR §§ 501 and 503(a) because CEDA and the Tribe selected New York County pursuant to Section 13.1 of the Indenture and agreed not to contest such venue. Further, the Trustee resides in New York County.

FACTUAL ALLEGATIONS

I. In 2012, CEDA Issued the Secured Notes to Finance the Casino

25. The Tribe is a federally recognized Indian tribe. CEDA is a wholly owned unincorporated enterprise of the Tribe and operates the Casino at its direction.

26. On May 30, 2012, CEDA issued $250,406,000 9¾% in Secured Notes due 2020 pursuant to the Indenture. CEDA used the Secured Notes to refinance obligations it incurred to construct and make certain capital improvements to the Casino.

[2] Pursuant to the Indenture, CEDA and the Tribe have granted an "irrevocable limited waiver of sovereign immunity . . . from unconsented suit, arbitration or other legal proceedings . . . with respect to the Transaction Documents and the transactions contemplated thereby . . . to . . . interpret or enforce the provisions of the Transaction documents or rights arising in connection therewith or the transactions contemplated thereby, whether such rights arise in law or equity." Indenture § 13.1(b). Section 8.5.3 of the Forbearance Agreement and Section 8.19 of the Intercreditor Agreement contain substantially identical language. In Resolution #2012-78 of the Picayune Rancheria of the Chukchansi Indians, the Tribal Council affirmed this waiver of sovereign immunity.

27. Also on May 30, 2012, CEDA, the other grantors party thereto and the Trustee entered into the Security Agreement. As security for the Secured Notes, CEDA granted a security interest to the Trustee (for the benefit of the Holders) in all of the Casino's cash and revenues, which were pledged as collateral for the Secured Notes. CEDA is required to deposit the Casino's cash and revenues into the Deposit Accounts at Rabobank. The Trustee was granted a perfected security interest in and control over the Deposit Accounts pursuant to a Deposit Account Control Agreement, also dated as of May 30, 2012, among the Tribe, CEDA, the Trustee (as Collateral Agent), Rabobank and UMB Bank (the "2012 DACA"). The Security Agreement, the DACA, any intercreditor agreements, all Uniform Commercial Code filings and all other agreements evidencing or providing for a lien to secure CEDA's Indenture obligations are collectively referred to as the "Collateral Documents."

28. Payments under the 2012 agreements were intended to work as follows. The Casino generated cash, over which the Trustee (for the benefit of the Holders) had a security interest pursuant to the Security Agreement. CEDA then placed that cash into Deposit Accounts, over which the Trustee (for the benefit of the Holders) had a perfected security interest and control pursuant to the Security Agreement and the 2012 DACA.

29. Cash was then distributed out of the Deposit Accounts to fund Casino operations, make monthly Tribal Distributions and make interest and principal payments on the Secured Notes. Under the Indenture, CEDA must make set interest payments on the Secured Notes semi-annually, on March 30 and September 30 of each year. The Indenture has a mandatory redemption provision that obligates CEDA to repay principal on the Secured Notes on March 30

and September 30 of each year with the excess liquidity above a certain threshold,[3] if any, remaining after the payment of Tribal Distributions and certain other expenditures. Such a payment made with cash available over a set threshold is commonly known as a "cash sweep."

30. If CEDA defaults under the Indenture, the Trustee has the right to issue a Notice of Default to Rabobank giving the Trustee control over withdrawals from the Deposit Accounts, except that the Trustee must still permit Rabobank to make withdrawals for Tribal Distributions.

31. If CEDA intentionally fails to pay interest or principal on the Secured Notes when due at a time when it had funds available to make such a payment (after giving effect to certain reserves, including for Tribal Distributions and operating liquidity), that triggers a Tribal Default, giving the Trustee the right to issue a Notice of Tribal Default to Rabobank. CEDA is not permitted to make any Tribal Distributions after the Trustee issues a Notice of Tribal Default.

II. CEDA's Breaches of the Indenture in 2013 Required this Court's Intervention

32. CEDA and the Tribe have a long history of noncompliance with the Indenture. This Court has previously found CEDA and the Tribe to be in breach of the Indenture and Security Agreement, and has enjoined CEDA and the Tribe from taking actions that violated the plain terms of those agreements.

33. Starting in February 2013, against the backdrop of a dispute between two factions of the Tribe, CEDA stopped depositing the Casino's cash and revenues into the Deposit Accounts, and started depositing them in new accounts at other banks over which the Trustee had no security interest or control. CEDA also began withholding millions of dollars in revenues from bank accounts entirely, holding the cash at the Casino instead. At the same time, the Casino stopped paying critical vendors. These and other violations of cash controls caused

[3] This threshold was set at $14 million in 2012 and, as discussed further below, revised to $12 million in 2015.

substantial disruption to the management of the Casino's operations and finances. Moreover, they violated the Indenture and Security Agreement.

34. On March 30, 2013, CEDA failed to make a full payment of interest due under the Secured Notes, which constituted an automatic Event of Default under the Indenture.

35. CEDA's breaches endangered the collateral for the Secured Notes and placed the financial well-being of the Casino in danger, and thus the Trustee was directed to file suit in this Court on June 18, 2013 to enforce its legal rights and protect the collateral for the benefit of the Holders. If not enjoined, these actions would have risked irreparable harm to the Trustee, the Holders, Casino employees and Casino vendors.

36. This Court agreed, issuing an order to show cause against CEDA on June 19, 2013. Then, on July 2, 2013, this Court found that the Trustee and Holders were suffering irreparable harm and entered a preliminary injunction to protect the collateral, ordering CEDA to deposit the Casino's cash and revenues, including cash held at the Casino and deposited with other banks, into the Deposit Accounts at Rabobank.

37. This Court's issuance of a preliminary injunction stabilized the Casino's operations and financial well-being. Unfortunately, due to the actions of members of the Tribe, this stability proved to be temporary.

III. The Armed Takeover of the Casino in October 2014 Led to New Events of Default

38. On the evening of October 9, 2014, the leader of a third faction of the Tribe entered the Casino with approximately twenty-five security personnel to attempt an armed takeover of the Casino. Weapons, including firearms, were wielded on both sides, and one faction reported a stun gun was used against one of its members. Fortunately, no serious injuries occurred. As the incident unfolded, Casino patrons and employees were evacuated and some of the patrons of the adjoining hotels were evacuated. The Madera County Sheriff's Office arrived

that evening and secured the Casino and surrounding property, at which point it closed the Casino. The leader of the armed takeover was subsequently sentenced to 16 months in prison.

39. On October 10, 2014, the National Indian Gaming Commission ("NIGC") issued a Notice of Violation and Temporary Closure Order, directing that the Tribe cease and desist from all gaming activity in the Casino given the threat to public health and safety. The Temporary Closure Order could only be lifted "for good cause shown."

40. The closure of the Casino triggered an Enforcement Event under the Security Agreement because "the Facility [could] no longer be lawfully operated by the Issuer," which gave the Trustee the right to possess the funds in the Deposit Accounts at Rabobank.

41. CEDA failed to make full Secured Note interest payments on March 30, 2015 and September 30, 2015, constituting new automatic Events of Default under the Indenture.

IV. Through the Holders' Efforts, the Casino Re-Opened in 2015, and CEDA Obtained New Loans to Fund the Re-Opening

42. After the closure that resulted from the Tribe's own actions, the Casino's prospects were dim.

43. Certain Holders undertook significant efforts to help the Casino re-open. While the Casino lay abandoned, one Holder provided bridge loans that CEDA used for the upkeep of the Casino and hiring of a property overseer to keep the it safe from vandals and looters who had begun to appear on the premises.

44. That same Holder met with the Tribe and NIGC to persuade the NIGC to permit the Casino to re-open. These efforts eventually bore fruit, and the NIGC agreed on December 21, 2015 to lift its closure order for the Casino.

45. However, CEDA had insufficient funds to re-open or operate the Casino. Even if re-opening were permitted, CEDA would be unable to fund necessary capital improvements as

the Casino had lain derelict for several months. Nor could it afford to hire and train staff necessary to run the Casino after re-opening. Additionally, CEDA had no ability to fund "cage cash," or the operating cash in the machines and tables necessary to operate the Casino.

46. CEDA required approximately $35 million to take all the steps necessary to re-open the Casino. The amount of cash needed to re-open the Casino was growing by the day as it lay abandoned. If lenders did not step in soon, the amount required to re-open the Casino would balloon to more than any lender would be willing to loan, putting the Casino on the precipice of being irrevocably lost.

47. No lender was willing to lend CEDA money on an unsecured basis given its credit history, and an unsecured loan was not permitted by the Indenture in any event. A senior secured loan would be more palatable to a lender, but such a loan in excess of $10 million was not permitted by the Indenture. The only option to re-open the Casino was for the Trustee and the Holders to waive or modify provisions of the Indenture to permit $35 million in secured loans that would be senior to their Secured Notes.

48. The Holders preferred to work with CEDA and the Tribe rather than see their investment in the Casino founder. So, despite CEDA's past breaches, the Trustee and Holders agreed to modify the Indenture to permit the $35 million in senior secured loans, so long as additional controls were put in place to protect the Trustee and Holders. Without this critical step, in which the Holders agreed to subordinate their own Secured Notes, the Casino had no chance of re-opening.

49. When CEDA could not find another lender willing to loan it money, even on a senior secured basis, certain Holders stepped in to provide the senior secured loans themselves.

V. The Parties Entered into the Re-Opening Agreements

50. On December 23, 2015, the parties entered into the Re-Opening Agreements.

51. CEDA, the Tribe, UMB Bank and the Re-Opening Lenders entered into the Re-Opening Credit Agreement to govern the $35 million in Re-Opening Loans and the Second Supplemental Indenture to permit such loans.

52. CEDA, UMB Bank and the Trustee entered into the Intercreditor Agreement, which governs the relationship between the Re-Opening Lenders and the Holders.

53. After re-opening, the Casino began to generate cash again, over which the Trustee (on behalf of the Holders) has a security interest pursuant to the Security Agreement. CEDA remains obligated to place the Casino's cash and revenues into the Deposit Accounts, over which the Trustee (on behalf of the Holders) still has a perfected security interest and control pursuant to the Security Agreement and an amended and restated Deposit Account Control Agreement (the "2015 DACA").[4]

54. While the Re-Opening Loan obligations were owed to the Re-Opening Lenders, withdrawal of cash from the Deposit Accounts was governed by the Disbursement Agreement. When CEDA wished to withdraw cash, it had to issue a withdrawal certificate and then distribute the cash in the order set forth in the "waterfall" provision in Section 3.1(c) of the Disbursement Agreement, which required withdrawn funds to be paid in the following order:

a. O&M Costs for the Casino;

b. certain Restricted Junior Payments permitted by the Re-Opening Credit Agreement (including Tribal Distributions);

c. the costs, fees and expenses of UMB Bank;

d. debt service payments on the Re-Opening Loans;

[4] Following UMB Bank's resignation under the 2015 DACA on April 26, 2019, the Trustee assumed the role of Notice Agent under the 2015 DACA.

e. all other required payments under the Re-Opening Loans, including amortization;

f. the costs, fees and expenses of the Trustee;

g. capital expenditures;

h. payments to maintain liquidity reserves of $12 million; and

i. payments due on the Secured Notes.

55. The Disbursement Agreement does not permit cash to be withdrawn for optional prepayments of the Re-Opening Loans.

56. The Disbursement Agreement terminates upon repayment of the Re-Opening Lenders.

57. Separate from the waterfall, interest payments on the Secured Notes remained due semi-annually under the Indenture, and the obligation to sweep excess cash to repay principal on the Secured Notes also remained intact. However, CEDA had racked up millions in unpaid interest that was past due, and was certain to continue being unable to make the full semi-annual interest payments required by the Indenture.

58. Recognizing this, the Re-Opening Credit Agreement required CEDA to make semi-annual payments of interest and principal on the Secured Notes via cash sweeps when its liquidity exceeded a $12 million threshold, after accounting for certain payments, including payments due on the Re-Opening Loans and the payment of Tribal Distributions.

59. The status quo under the Re-Opening Agreements, therefore, allows CEDA to operate the Casino, make Tribal Distributions, repay the Re-Opening Lenders and then make payments on the Secured Notes with anything left over above a $12 million liquidity threshold via semi-annual cash sweeps.

60. The Forbearance Agreement provided that the Trustee and Holders would forbear from exercising remedies for CEDA's Indenture defaults, including its past and likely future failures to make full semi-annual interest payments on the Secured Notes. There would not have been a deal to provide the Re-Opening Loans without the Forbearance Agreement in place. Sections 3.1 and 3.2 of the Forbearance Agreement, which govern forbearance for CEDA's payment and performance defaults, are explicit that none of those defaults (other than certain specified performance defaults not relevant here) were waived. The Forbearance Agreement was meant to give the Re-Opening Lenders control over remedies for CEDA's defaults, and Section 8.2 of the Forbearance Agreement is explicit that the forbearance provisions are for the "express benefit" of the Trustee, Holders and Re-Opening Lenders and "are not for the benefit of [CEDA] or the Tribe."

61. However, forbearance under the Forbearance Agreement remained in place only so long as certain specific conditions remained true.

62. One necessary condition to maintain forbearance was that CEDA had to make the semi-annual cash sweep payments of principal and interest on the Secured Notes required by the Re-Opening Credit Agreement.

63. Another requirement for forbearance to remain in place was that CEDA owed money to the Re-Opening Lenders. Once the Re-Opening Lenders were repaid, an event known as the "Discharge of Credit Agreement Obligations,"[5] there would be no need for the Holders to protect the Re-Opening Lenders by forbearing from remedies, and the parties would return to the status quo existing before the issuance of the Re-Opening Loans.

[5] Also known as the "Discharge of First Lien Obligations" in the Forbearance Agreement.

64. The Intercreditor Agreement deems a Discharge of Credit Agreement Obligations not to have occurred if CEDA were to consummate a valid "Refinancing." As described further in Section VIII.B below, a valid Refinancing is strictly defined under the Intercreditor Agreement and Indenture, and a valid Refinancing with a Tribe-affiliated lender must meet even stricter requirements.

VI. The Defendants Scheme to Unlawfully Cease Secured Note Payments in Perpetuity

A. CEDA Carries out the Sham Refinancing Scheme

65. CEDA and the Tribe repaid the Holders' forbearance and assistance by embarking on the Sham Refinancing Scheme in an attempt to cease Secured Note payments in perpetuity. CEDA and the Tribe, along with the Affiliated Lender, have committed numerous breaches of the Indenture and related agreements in the process.

66. Leading up to March 2019, CEDA began stockpiling cash by withholding it from the Deposit Accounts, violating an agreed-upon cash control.

67. On March 21, 2019, the Tribe formed the Affiliated Lender. Like CEDA, the Affiliated Lender is wholly owned by the Tribe and has the same leadership and management. CEDA's March 21, 2019 Current Report to the Trustee and Holders states that "the [Affiliated] Lender is an independent legal entity separate from, but wholly owned by the Tribe, with members of the Board of Managers and officers of the [Affiliated] Lender being the same as the members and officers of the Tribal Council."

68. Also on March 21, 2019, the Affiliated Lender "loaned" $2 million to CEDA pursuant to a new credit agreement (the "Affiliated Credit Agreement") between the Affiliated Lender and CEDA. This loan, from one entity wholly owned and operated by the Tribe to another, is nothing more than an artifice meant to further the Sham Refinancing Scheme.

69. That same day, CEDA used $12 million in stockpiled cash that it diverted from the Deposit Accounts, plus the $2 million "loaned" from the Affiliated Lender, to repay the entirety of the Re-Opening Loans. CEDA's March 21, 2019 Current Report, which refers to this transaction as the "Pay-Off," is explicit that the "Pay-Off was partially funded by a $2,000,000 term loan to [CEDA] from the [Affiliated Lender]," while the "remainder of the Pay-Off was funded by $12,410,666.67 of [CEDA]'s cash on hand." This was a non-mandatory prepayment of the Re-Opening Loans.

70. The parties' agreements obligate CEDA to deposit all cash in the Deposit Accounts, where it is available to make Note payments via cash sweeps. CEDA is not permitted to keep the Casino's revenues as "cash on hand."

71. CEDA's withdrawal certificates prior to March 21, 2019 confirm that the $12 million was not withdrawn from the Deposit Accounts. On information and belief, CEDA diverted the $12 million in "cash on hand" from the Deposit Accounts because, if it had properly deposited the cash in the Deposit Accounts, the Disbursement Agreement waterfall would not have permitted CEDA to make optional prepayments of the Re-Opening Loans.[6]

72. Since the Casino re-opened on December 31, 2015, CEDA had generated enough cash to allow for some cash sweep payments on the Secured Notes on each semi-annual payment date. However, on March 30, 2019, the Deposit Accounts did not have sufficient cash to make a cash sweep payment on the Secured Notes for the first time since the Casino's re-opening, even though the Casino was generating operational revenues consistent with past revenues that

[6] If CEDA had asked, the Holders may have consented to an optional prepayment of the Re-Opening Loans, so long as CEDA continued to make Secured Note payments after the Re-Opening Lenders were repaid. But CEDA never made such a request to the Holders, choosing instead to embark on the unlawful Sham Refinancing Scheme.

supported prior cash sweep payments. The Deposit Accounts would have had enough cash for a cash sweep payment but for CEDA's diversion of cash to repay the Re-Opening Lenders.

73. Also on March 21, 2019, the Affiliated Lender delivered to the Trustee a purported joinder to the existing Intercreditor Agreement. This is an apparent attempt by the Affiliated Lender to step into the shoes of a Re-Opening Lender, but it does not comply with the terms of the Indenture.

74. On April 11, 2019, without informing the Trustee, CEDA and the Affiliated Lender purported to enter into the 2019 DACA with Rabobank, under which the Affiliated Lender claims control over CEDA's deposit accounts with Rabobank. This directly conflicts with the 2015 DACA, which has not been terminated and which CEDA knew perfectly well was still in place. The Trustee did not learn of the 2019 DACA until June 25, 2019.

B. CEDA Announces It Will Cease Payments on the Secured Notes and Claims the Trustee and Holders Cannot Exercise Remedies

75. On March 28, 2019, CEDA informed the Holders during a public investor call that it would cease making interest and principal payments under the Secured Notes after September 30, 2019. CEDA admitted, and has since reaffirmed, that it took the foregoing actions for the purpose of avoiding Note payments under the Indenture.

76. CEDA's position is that the Affiliated Lender has "stepped into the shoes" of the Re-Opening Lenders, allowing CEDA to violate the Indenture with impunity. CEDA has taken the position that the Affiliated Lender now controls the forbearance previously put in place with the Trustee, Holders and Re-Opening Lenders. As such, CEDA claims that the Trustee and Holders must forbear from exercising remedies while the Affiliated Lender's "loan" to CEDA—a loan controlled entirely by the Tribe—remains outstanding.

77. According to CEDA's counsel, it owes nothing under the Indenture and will not make future Secured Note payments. CEDA's counsel admitted on March 28, 2019 that failure to make cash sweep payments would constitute a Tribal Default, but asserted that the Trustee and Holders were unable to exercise remedies.

78. The endgame of the Sham Refinancing Scheme is to use $12 million in improperly diverted cash and a $2 million "loan" to CEDA from the Affiliated Lender to subordinate over $250 million in principal amount of defaulted indebtedness under the Secured Notes in perpetuity.

79. The Sham Refinancing Scheme fails, however, because CEDA's repayment of the Re-Opening Lenders means that the Forbearance Agreement has terminated and the Trustee and Holders are free to exercise remedies for CEDA's numerous defaults under the Indenture.

VII. CEDA's Past and Planned Defaults Under the Indenture

80. CEDA has committed a number of defaults under the Indenture, both before and after entering into the Forbearance Agreement. CEDA has plainly stated that it plans to commit future defaults as well.

A. CEDA's Defaults Prior to Entering into the Forbearance Agreement

81. Under Section 6.1(1) of the Indenture, "failure to pay principal of (or premium, if any, on) the [Secured] Notes when due and payable" is an "Event of Default." Under Section 6.1(2) of the Indenture, "failure to pay any interest on the [Secured] Notes when due and payable, [after] such failure continues for 30 days or more" is an Event of Default.

82. When the parties entered into the Forbearance Agreement on December 23, 2015, CEDA admitted in Recital G that it had "failed to pay interest on the Notes when due and payable on . . . March 30, 2015," meaning that "certain Events of Default have occurred under

[Section 6.1(2)][7] of the Indenture." CEDA had also failed to pay the full amount of interest on the Secured Notes due on September 30, 2015. These payment defaults have not been cured.

83. The parties also noted in Recital H that CEDA may have failed to make required principal payments via cash sweeps that "would have resulted in an Event of Default under Section 6.2(1) of the Indenture." CEDA further conceded in Recital H that "Existing Performance Defaults" had resulted from CEDA's past actions.

84. These past defaults have not been cured, and (with the exception of certain performance defaults listed in the Forbearance Agreement that are not applicable here) they have not been waived.

B. CEDA's Defaults Since Entering into the Forbearance Agreement

85. The parties further recognized in Recital I to the Forbearance Agreement that CEDA may commit "Future Payment Defaults" and "Future Performance Defaults." CEDA has indeed committed a number of defaults since entering into the Forbearance Agreement.

86. CEDA has failed to make full Secured Note interest payments on every semi-annual payment date since entering into the Forbearance Agreement, with each failure constituting a default under Section 6.1(2) of the Indenture. These defaults have not been cured to this date, and Section 3.1 of the Forbearance Agreement is explicit that these defaults have not been waived.

87. Section 6.1(4) of the Indenture provides that CEDA's "failure to perform any other covenant or agreement" under the Indenture constitutes an Event of Default following a notice period. A "Default" under the Indenture "means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default." Therefore, any breach of the

[7] The Forbearance Agreement inadvertently refers to Section 6.2(2) of the Indenture, but there is no Section 6.2(2), and this is clearly a reference to Section 6.1(2).

Indenture by CEDA is an automatic Default, even before it ripens into an Event of Default, which permits acceleration of the Secured Notes.

88. CEDA has defaulted by violating Section 4.25 of the Indenture, which requires CEDA to deposit all Gross Revenues, other than Operating Cash and Excluded Assets, into the Deposit Accounts. CEDA failed to do so on a number of occasions, including when it impermissibly diverted cash from the Deposit Accounts to pay off the Re-Opening Loans.

89. It is an Event of Default under Section 6.1(5) of the Indenture for CEDA to default under an agreement "evidencing or securing Indebtedness of [CEDA]." This definition includes the Disbursement Agreement, pursuant to which CEDA agreed to "secure all of the obligations under the Senior Notes Indenture."

90. CEDA committed numerous defaults under the Disbursement Agreement while it was in effect, thereby triggering defaults under the Indenture. The Disbursement Agreement permitted CEDA to withdraw cash to cover O&M Costs of the Casino, which were to be paid before everything else in the waterfall, including monthly Tribal Distributions of up to $875,000 permitted by the Indenture.

91. On multiple occasions, CEDA evaded the monthly limit on Tribal Distributions by making additional distributions by the Tribe that were disguised as withdrawals to cover O&M Costs. For instance, in August 2017, CEDA paid at least $3 million in "bonuses" to non-union Casino employees, whether or not they were members of the Tribe, plus union employees who were Tribal members. Non-Tribal union employees did not receive any "bonuses." CEDA claimed the "bonuses" were O&M Costs. The Casino's CFO indicated to one of the Holders that this "bonus" scheme took place in August 2017 so that the August 2017 cash balance would be lower and Holders would be less likely to notice the withdrawal of cash that should have been

available to be swept to the Holders on September 30, 2017. Similarly, in September 2017, CEDA used the Casino's cash to pay a $700,000 settlement for failure to make lease payments, $200,000 of which was attributable to the Tribe and had nothing to do with the Casino.

92. Section 4.28 of the Indenture requires CEDA to operate the Casino "in good faith" and prohibits CEDA from operating the Casino in a manner, among other things, "intended to reduce Excess Cash Flow." Excess Cash Flow is CEDA's cash flow, minus Tribal Distributions and certain expenses.

93. CEDA's diversion of cash from the Deposit Accounts to pay off the Re-Opening Loans on March 21, 2019 intentionally reduced Excess Cash Flow available to make Secured Note payments in bad faith with only nine days left before the semi-annual Secured Note payment date on March 30, 2019. CEDA's distribution of cash to Tribal members disguised as payments of O&M Costs also intentionally reduced Excess Cash Flow available to make Secured Note payments in bad faith.

94. Section 8.2 of the Indenture lists a number of modifications of the Indenture that CEDA may only make with consent of the majority of the Holders and the consent "of the Holder of each Note affected thereby." Yet CEDA has sought to, in effect, make several of those modifications unilaterally. Section 8.2(1) prohibits CEDA from unilaterally changing the maturity of the principal of any Note. CEDA has asserted that the effect of its refinancing is to prevent the Trustee and Holders from exercising remedies under the Indenture until the Affiliated Credit Agreement is paid off at some unknown point in the future, effectively seeking to change the maturity date of the Secured Notes without the Holders' consent. Similarly, Section 8.2(3) bars CEDA from extending the time for payment of interest on any Note, and CEDA has attempted to do precisely that by claiming its actions prevent the Trustee and Holders

from exercising remedies for so long as CEDA's nominal "loan" obligations to another wholly owned enterprise of the Tribe remain outstanding.

95. Under Section 8.2(6) of the Indenture, CEDA may not unilaterally impair the right of Holders to receive payment of principal and interest on the Secured Notes or to institute suit for enforcement of any payment. That is exactly what CEDA has done through its purported refinancing, which seeks to hold the Holders' right to exercise remedies in abeyance until CEDA and the Tribe decide otherwise. Section 8.2(9) of the Indenture prohibits CEDA from causing the Secured Notes to become subordinated in right of payment to any other Indebtedness without the Holders' consent. While the Holders consented to subordinating the Secured Notes to the Re-Opening Loans, they have not consented to a subordination of the Secured Notes to the Affiliated Credit Agreement obligations.

96. As described more fully in paragraphs 111-128 and 149-152 below, CEDA has breached a number of Indenture provisions in connection with the Sham Refinancing Scheme. CEDA violated Section 4.10 of the Indenture by taking on indebtedness not permitted by the provisions of Sections 4.10(a) or 4.10(b) of the Indenture. The Tribe has also breached the Indenture in connection with the purported refinancing. As discussed in paragraphs 153-156 below, the Tribe has violated Section 4.24 of the Indenture by imposing additional payment obligations on CEDA, by restricting CEDA's right to conduct business in a manner materially adverse to the Holders' economic interests and by asserting that the payment and negative covenants in the Transaction Documents are no longer valid, binding and legally enforceable obligations.

C. CEDA's Planned Defaults

97. Since consummating the purported refinancing, CEDA has stated that it intends to cease payment of interest and principal due under the Secured Notes after September 30, 2019.

This explicit plan constitutes an Event of Default under Sections 6.1(1) and 6.1(2) of the Indenture.

98. CEDA's position is that it can breach the Indenture with impunity because the Affiliated Lender controls the remedies for CEDA's defaults.

VIII. CEDA's Repayment of the Re-Opening Lenders Means Forbearance Has Ended and the Trustee and Holders May Exercise Remedies for CEDA's Indenture Defaults

99. In reality, CEDA's Sham Refinancing Scheme paid off the Re-Opening Loans without meeting the Indenture's and Intercreditor Agreement's strict requirements for a valid Refinancing. As a result, forbearance is no longer in effect and the Trustee and Holders are permitted to exercise remedies for CEDA's past and planned defaults under the Indenture.

A. The Forbearance Agreement Is No Longer in Effect Because CEDA Has Caused the Discharge of Credit Agreement Obligations

100. Pursuant to Sections 3.1 and 3.2 of the Forbearance Agreement, the Trustee and Holders agreed to forbear from exercising remedies with respect to CEDA's defaults under the Indenture ***only until*** the repayment of the Re-Opening Lenders. This event is called the "Discharge of First Lien Obligations" in the Forbearance Agreement and the "Discharge of Credit Agreement Obligations" in the Intercreditor Agreement.

101. Specifically, Section 3.1 governed the Trustee's forbearance for Payment Defaults during the Payment Default Forbearance Period, defined as "[t]he period commencing on the Closing Date and terminating on the Discharge of First Lien Obligations." Section 3.2 governed the Trustee's forbearance for Performance Defaults during the Performance Default Forbearance Period, defined as "the period commencing on the Closing Date and terminating on the Discharge of First Lien Obligations."

102. Section 8.2.2 of the Forbearance Agreement provided that "Sections 3.1 and 3.2 of this Agreement are for the express benefit of the Trustee, the Credit Agreement Lenders, the Credit Agreement Agent under the Re-Opening Credit Facilities and the Directing Holders."

103. Under the Intercreditor Agreement, the Discharge of Credit Agreement Obligations occurs when (a) the principal of and interest on the indebtedness under the "Loan Documents" (*i.e.*, the Re-Opening Credit Agreement and its related documents) have been paid, (b) all other due and payable "Credit Agreement Obligations" (*i.e.*, CEDA's obligations under the Re-Opening Credit Agreement) that are due and payable have been paid and (c) all commitments to extend credit that would constitute Credit Agreement Obligations have terminated.

104. According to CEDA's own Current Report to the Trustee and Holders, each of these conditions has been satisfied. It states that, "[o]n March 21, 2019, [CEDA] satisfied all its obligations under [the Re-Opening Credit Agreement] and related documents, including paying all principal of and accrued interest on the indebtedness evidenced by the [Re-Opening] Credit Agreement (the 'Pay-Off')."

105. Because CEDA has fully paid the principal and interest on the Re-Opening Loans, conditions (a) and (b) of the definition of Discharge of Credit Agreement Obligations are satisfied. Additionally, all commitments to extend credit that would constitute Credit Agreement Obligations have expired and terminated, in satisfaction of condition (c). The "loan" between CEDA and the Affiliated Lender, two wholly owned and identically governed bodies of the Tribe, is not a valid commitment to extend credit constituting Credit Agreement Obligations. It is a sham transaction that tries—but fails—to use legal artifice to preserve the Re-Opening Loans that CEDA acknowledges have been paid off.

106. According to CEDA's own statements, a Discharge of Credit Agreement Obligations has taken place. Therefore, the Payment Default Forbearance Period and Performance Default Forbearance Period have each terminated, and the Trustee and Holders are free to exercise remedies for CEDA's past and planned Indenture defaults.

B. CEDA Has Not Entered into a Valid "Refinancing" Under the Intercreditor Agreement and Indenture

107. CEDA's position is that its Sham Refinancing Scheme constituted a valid Refinancing under the Intercreditor Agreement. CEDA is mistaken.

108. The Intercreditor Agreement's definition of the Discharge of Credit Agreement Obligations provides that it "shall be deemed not to have occurred if any Loan Document is Refinanced in accordance with Section 5.3" of the Intercreditor Agreement. Section 5.6 of the Intercreditor Agreement states that a Discharge of Credit Agreement Obligations will be deemed not to have occurred if CEDA "enters into any Refinancing of any Loan Document evidencing a Credit Agreement Obligation which Refinancing is permitted by this Agreement."

109. The Sham Refinancing Scheme is not a valid Refinancing permitted by the Intercreditor Agreement. Section 5.3(a) of the Intercreditor Agreement imposes critical and stringent conditions on what constitutes a valid Refinancing of the Re-Opening Credit Agreement and related documents, referred to as the "Loan Documents." It states:

> The Loan Documents may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with their terms and the Credit Agreement Debt may be Refinanced . . . ***provided*** that any such amendment, restatement, supplement, modification or Refinancing is ***not inconsistent with the terms of this Agreement*** . . . ***provided, further***, that the Credit Agreement Debt ***many not be Refinanced in an amount that would result in a violation of Section 4.10 of the Indenture*** without the consent of the [Trustee]. (Emphasis added).

110. Therefore, a valid Refinancing must ***both*** (1) comply with Section 4.10 of the Indenture ***and*** (2) comply with the other provisions of the Intercreditor Agreement. CEDA's purported refinancing violates both of these strict conditions.

(1) Section 4.10 of the Indenture Does Not Permit the Sham Refinancing Scheme

111. Section 4.10 of the Indenture prohibits CEDA from incurring debt other than the "Permitted Indebtedness" specified in that section. CEDA's indebtedness with the Affiliated Lender does not meet the requirements of any provision in Section 4.10.

112. Section 4.10(b)(3) permits CEDA to borrow up to $10 million from the Affiliated Lender under a new credit agreement, but requires both entities to enter into the a new intercreditor agreement in a form specified in Annex II to the Indenture (the "Affiliated Intercreditor Agreement"), which they have not done.

113. Section 4.10(b)(10) allows CEDA to refinance more than $10 million of debt with the Affiliated Lender under a new credit agreement, but still requires both entities to enter into the new intercreditor agreement specified in Annex II to the Indenture, which they have not done.

114. Section 4.10(b)(12)(D) allows CEDA to borrow from the Affiliated Lender under the Re-Opening Credit Agreement, but CEDA must not be in default under the Indenture and the Affiliated Lender cannot hold more than 20% of the outstanding loans. CEDA and the Affiliated Lender fail both conditions.

a. Section 4.10(b)(3) Does Not Permit CEDA's Indebtedness to the Affiliated Lender

115. Section 4.10(b)(3) of the Indenture would permit CEDA to borrow up to $10 million from the Affiliated Lender under a new credit agreement, but it requires both entities to enter into the Affiliated Intercreditor Agreement.

116. Specifically, if any lenders wish to loan money to CEDA under Section 4.10(b)(3), the provision requires that "such lenders will have become parties to an Intercreditor Agreement." The Indenture defines an "Intercreditor Agreement" to mean, with respect to indebtedness extended by "the Tribe or an Affiliate thereof . . . an intercreditor agreement in substantially the form set forth on Annex II" to the Indenture—that is, the Affiliated Intercreditor Agreement.

117. The parties went to the trouble of negotiating and agreeing to the form of the Affiliated Intercreditor Agreement before attaching it as Annex II to the Indenture. The Affiliated Intercreditor Agreement is specially designed for instances of indebtedness to affiliated lenders and contains protections to ensure the Trustee and Holders maintain their ability to exercise remedies for a failure to pay the principal and interest on the Secured Notes. Specifically, under the Affiliated Intercreditor Agreement, the Trustee and Holders would only face a 90-day "standstill" period before they could exercise remedies for a Default by CEDA under the Indenture.

118. In other words, the Affiliated Intercreditor Agreement would make it impossible for CEDA to claim indefinite immunity from remedies following its Defaults. Undoubtedly aware of this, the Affiliated Lender sought to sidestep the Affiliated Intercreditor Agreement protections by purporting to join the existing Intercreditor Agreement instead.

119. Because CEDA and the Affiliated Lender have not entered into the Affiliated Intercreditor Agreement, CEDA's purported refinancing does not satisfy the requirements of Section 4.10(b)(3) of the Indenture.

b. Section 4.10(b)(10) Does Not Permit CEDA's Indebtedness to the Affiliated Lender

120. Section 4.10(b)(10) of the Indenture permits the "refinancing" of outstanding indebtedness incurred under Section 4.10(b)(3) and provides that such indebtedness "shall be deemed to be incurred under [Section 4.10(b)(3)] without giving effect to any maximum Indebtedness restrictions in [Section 4.10(b)(3)]."

121. Put simply, Section 4.10(b)(10) merely permits indebtedness already incurred under Section 4.10(b)(3) to be refinanced and exceed the $10 million cap of Section 4.10(b)(3).

122. Section 4.10(b)(10) does not permit indebtedness to be incurred without complying with the other provisions of Section 4.10(b)(3), including the Affiliated Intercreditor Agreement requirement.

123. To read Section 4.10(b)(10) otherwise would render its language superfluous and be an end-run around the express provisions of Section 4.10.

124. Accordingly, because the entities have not entered into the Affiliated Intercreditor Agreement, Section 4.10(b)(10) does not permit CEDA's indebtedness to the Affiliated Lender or otherwise excuse CEDA's failure to comply with Section 4.10(b)(3).

c. Section 4.10(b)(12)(D) Does Not Permit CEDA's Indebtedness to the Affiliated Lender

125. Section 4.10(b)(12)(D) of the Indenture would permit CEDA to incur indebtedness with the Affiliated Lender under the Re-Opening Credit Agreement, provided that "no more than 20% of such Indebtedness, at any time, shall have been provided by the Tribe and all Affiliates of the Tribe."

126. Following the purported refinancing, CEDA only has $2 million of outstanding indebtedness under a credit agreement, and 100% of that is held by the Affiliated Lender, so this condition is not satisfied.

127. Section 4.10(b)(12)(D) of the Indenture is consistent with Section 9.04(g)(iii) of the Re-Opening Credit Agreement, which provided that an affiliated lender could hold Re-Opening Loans, so long as it did not hold more than "20% of the then outstanding principal amount" of such loans.

* * * * *

128. Because CEDA's indebtedness to the Affiliated Lender is not permitted by Section 4.10 of the Indenture, it has not consummated a valid Refinancing under Section 5.3(a) of the Intercreditor Agreement.

(2) The Sham Refinancing Scheme Violates Other Provisions of the Intercreditor Agreement

129. To be valid, a Refinancing must also comply with other provisions of the Intercreditor Agreement.

130. CEDA's attempted refinancing violates Section 5.3(c) of the Intercreditor Agreement. That provision prohibits "any amendment, waiver or consent in respect of any of the [Re-Opening] Credit Agreement Collateral Documents" that has the effect of "subordinating or impairing the right of payment or lien position of the [Holders] in an amount in excess of the Cap Amount, except to the extent such Lien is permitted by the Indenture."

131. The Cap Amount is defined as the amount of Re-Opening Loans outstanding at the time of the repayment, which in this case totaled approximately $14 million. CEDA has attempted to use its repayment of $14 million in Re-Opening Loans to subordinate more than $250 million in outstanding Secured Notes. That is precisely the sort of subordination and impairment prohibited by Section 5.3(c) of the Intercreditor Agreement. And, as described above in paragraphs 111-128, the lien effecting this subordination is not a Lien permitted by the Indenture.

132. This is an independent reason why CEDA's transaction with the Affiliated Lender is not a valid Refinancing under Section 5.3(a) of the Intercreditor Agreement.

(3) Because CEDA Has Not Consummated a Valid Refinancing, Forbearance Is No Longer in Effect

133. CEDA's purported refinancing with the Affiliated Lender does not comply with Section 5.3 of the Intercreditor Agreement or Section 4.10 of the Indenture.

134. It is therefore not a valid Refinancing under Section 5.3(a) of the Intercreditor Agreement. As such, the Discharge of Credit Agreement Obligations has occurred and forbearance is no longer in effect, so the Trustee and Holders are free to exercise remedies for CEDA's past and planned Indenture defaults.

C. Even if the Discharge of Credit Agreement Obligations Has Not Occurred, There Is No Forbearance for CEDA's Defaults

135. Section 3.1 of the Forbearance Agreement provided that the Trustee "does not forbear from the exercise of remedies" for a Payment Default that violates Section 5.13(e) of the Re-Opening Credit Agreement, which obligated CEDA to make semi-annual interest and principal payments on the Secured Notes via cash sweeps when liquidity exceeded $12 million.

136. This obligation remains in effect under Section 5.11(e) of the Affiliated Credit Agreement. CEDA admitted as much in its March 21, 2019 Current Report to the Trustee and Holders, which stated that "[t]he terms related to . . . required cash flow payments to [the Holders] are substantially the same as set forth in the [Re-Opening] Credit Agreement." CEDA's counsel wrote further on June 25, 2019 that the Trustee "may not enforce remedies so long as [the Affiliated Lender]'s loan to [CEDA] is in effect and holders of the [Secured] Notes issued under the 2012 Indenture have received certain cash flow payments (which they have)."

137. Contrary to the assertion of CEDA's counsel, CEDA failed to make the cash sweep payment required on March 30, 2019 because it intentionally withheld cash to repay the

Re-Opening Lenders instead. CEDA's plan to cease paying interest or principal on the Secured Notes after September 30, 2019 is a further violation of this obligation.

138. Additionally, Section 5.13(e) of the Re-Opening Credit Agreement (like Section 5.11(e) of the Affiliated Credit Agreement) obligated CEDA to pay the Holders based on Available Cash Flow, which is a financial accounting concept under the Re-Opening Credit Agreement that is based on financial accounting calculations like Consolidated Adjusted EBITDA and Consolidated Net Income.

139. However, on information and belief, CEDA failed to make payments in compliance with Section 5.13(e) of the Re-Opening Credit Agreement, because it has made payments based on cash accounting and cash availability rather than payments based on financial accounting. CEDA made a number of these payments without providing backup, giving the Holders no reason to believe CEDA was violating these obligations because they were receiving some (but ultimately not all) of the money owed as part of each payment. The Holders had no ability to bring a claim for this while the Re-Opening Lenders were in place.

140. Section 3.2 of the Forbearance Agreement provides that the Trustee will forbear from exercising remedies for performance defaults until "30 days after the [Casino's] Re-Opening Date," or January 30, 2016. There have been a number of Performance Defaults since that date. These include the defaults described in paragraphs 87-96 above. The Trustee and Holders are not obligated to forbear from remedies for those Defaults.

141. Section 3.4 of the Forbearance Agreement states that "[CEDA] and the Tribe represent and warrant to and for the benefit of the Trustee that such forbearance shall not have the effect of releasing any person or entity from liability for repayment of the indebtedness or performance of the obligations evidenced and/or secured by the Transaction Documents,"

including the Indenture. The Sham Refinancing Scheme is an explicit attempt by Defendants to release CEDA from liability for repayment of the Secured Notes.

142. If the scheme put in place by the Tribe, CEDA, and the Affiliated Lender were lawful, then its logical endpoint would be that CEDA could simply re-amend the Re-Opening Credit Agreement indefinitely so as to avoid its obligation to pay the Holders in perpetuity, with the Affiliated Lender effectively releasing CEDA from its obligation to pay the Secured Notes. That would violate the Forbearance Agreement.

143. Moreover, the parties simply could not have intended that CEDA's obligations to the Affiliated Lender—an entity that, like CEDA, is wholly owned and controlled by the Tribe—could count as Credit Agreement Obligations under the Forbearance Agreement and Intercreditor Agreement, thereby prohibiting the Trustee from exercising remedies against CEDA.[8] The whole point of the Affiliated Intercreditor Agreement is to prevent such a situation, which is why the parties went to the trouble of drafting it.

D. Summary: Termination of Forbearance

144. CEDA repaid the Re-Opening Lenders, causing the Discharge of Credit Agreement Obligations, leading to the termination of forbearance under the Forbearance Agreement.

145. The Sham Refinancing Scheme did not prevent the Discharge of Credit Agreement Obligations from occurring, because it was not a valid Refinancing under the Intercreditor Agreement and Section 4.10 of the Indenture.

[8] Section 6.07 of the Affiliated Credit Agreement itself contains a "no transactions with affiliates" covenant that demonstrates the parties' intent to restrict CEDA from entering into the Affiliated Credit Agreement.

146. Even if the Discharge of Credit Agreement Obligations has not occurred, there is no forbearance for CEDA's failure to make cash sweep payments, its numerous performance defaults under the Indenture or its attempt to release itself from liability for payment of the Secured Notes.

147. The Trustee and Holders are therefore free to exercise remedies against Defendants for their past and planned violations of the Indenture and related agreements.

148. By entering into the Indenture and related documents, the Tribe and CEDA waived sovereign immunity for claims brought pursuant to those documents. This sovereign immunity waiver extends to the Affiliated Lender, an entity wholly owned and governed by the Tribe. All three entities are subject to claims for their violations of the Indenture and related documents.

IX. CEDA's Actions Have Given the Trustee and Holders the Right to Call Tribal Defaults Under the Indenture

149. A Tribal Default is a special default under the Indenture, which defines it as follows:

> "Tribal Default" means a Default or Event of Default that arises as a result of either of the following having occurred and being continuing (and the economic effect thereof, if any, on the holders of the Notes has not been cured or remedied): (i) ***an intentional failure to pay any amount of principal or interest on the Notes when due, if at any time when such payment was due and not paid, [CEDA] had the funds available to make such full or partial payment*** (after giving effect to reserves for (a) the payment of the then-current Monthly Tribal Distribution, (b) current debt service on Credit Facilities that are senior in right of payment to the Obligations under this Indenture, the Notes, the Guarantees or any other Transaction Document, (c) current payment obligations in respect of FF&E Financings, and (d) [CEDA] to have Operating Liquidity of $12 million after making such payment), but did not make such full or partial payment, or (ii) ***a Default or an Event of Default under Section 4.24***. (Emphasis added).

150. Leading up to March 21, 2019, CEDA stockpiled more than $12 million in cash by diverting it from the Deposit Accounts. With only nine days to spare before the Secured Note

payment date on March 30, 2019, CEDA used the cash to pay off the Re-Opening Loans on March 21, 2019.

151. But for CEDA's diversion of $12 million from the Deposit Accounts, that cash would have been available to pay interest and principal on the Secured Notes when due on March 30, 2019. If properly deposited in the Deposit Accounts, the Disbursement Agreement waterfall would have prevented the cash from being withdrawn to make a non-mandatory Re-Opening Loan payment instead of a payment on the Secured Notes.

152. By improperly withholding more than $12 million in cash from the Deposit Accounts and then dissipating that cash, which would have been available to pay interest and principal on the Secured Notes nine days later, CEDA intentionally failed to pay principal or interest on the Secured Notes when due. This constitutes a Tribal Default.

153. The Tribe and the Affiliated Lender also breached Section 4.24 of the Indenture, constituting further Tribal Defaults.

154. Section 4.24(a)(1) provides that the Tribe and its Affiliates shall not "increase or impose any tax or other payment obligation" on CEDA, with certain exceptions related to the use of the Casino that are not relevant to this dispute. The Affiliated Lender is a wholly owned tribal enterprise and thus is an Affiliate of the tribe. As such, the payments required under the Affiliated Credit Agreement are prohibited by Section 4.24(a)(1).

155. Section 4.24(a)(3) of the Indenture prohibits the Tribe and its Affiliates from acting to "restrict or eliminate the right of [CEDA] . . . to conduct the Related Business in a manner that would be materially adverse to the economic interests of the Holders of the Notes." The interjection of the Affiliated Credit Agreement, which seeks to subordinate the payment of

the Secured Notes in perpetuity, is materially adverse to the Trustee and Holders' economic interests and violates Section 4.24(a)(3).

156. Section 4.24(a)(13) of the Indenture prohibits the Tribe and its Affiliates from asserting that the provisions of the Transaction Documents, including the Indenture, are not "valid, binding and legally enforceable obligations." Representatives of the Tribe have asserted that CEDA is not required to and will not comply with the payment or negative covenants of the Transaction Documents. CEDA's representatives have also argued that the Trustee and Holders are unable to exercise remedies under the Transaction Documents in perpetuity. These statements and actions are breaches of Section 4.24(a)(13).

157. Section 4.9(b)(8) of the Indenture permits CEDA to make monthly Tribal Distributions of $875,000. Section 1(d) of the 2015 DACA permits CEDA to continue making monthly Tribal Distributions even after the Trustee has delivered a Notice of Default to Rabobank.

158. However, once the Trustee has delivered a Notice of Tribal Default to Rabobank, Section 1(e) of the 2015 DACA provides that monthly Tribal Distributions "shall not be permitted."

159. Delivery of a Notice of Tribal Default is a discretionary action the Trustee may take once a Tribal Default has occurred. Because numerous Tribal Defaults have occurred, the Trustee has the right, but not the obligation, to issue a Notice of Tribal Default and prohibit CEDA from making any monthly Tribal Distributions.

160. The Trustee and Holders do not wish for the Trustee to issue a Notice of Tribal Default, if it can be avoided. But, as the parties have already agreed, the Trustee must have the freedom to issue a Notice of Tribal Default in order to prevent irreparable harm to it and the

Holders if CEDA continues to violate the cash controls in the parties' agreements, and CEDA is improperly attempting to strip the Trustee of its right to call a Notice of Tribal Default.

X. The Trustee and Holders Are Suffering Irreparable Harm

161. Any threat by CEDA to divert, dissipate or strip the Trustee's control over the collateral is a threat of immediate and irreparable harm to the Trustee and Holders. Cash diverted from the Deposit Accounts can be rapidly dissipated by sending it to the Tribe's members or elsewhere beyond the reach of the Trustee.

162. Cash that is improperly diverted or withdrawn from the Deposit Accounts in violation of agreed-upon cash controls is impossible to track or recover. Every dollar CEDA diverts from the Deposit Accounts is a dollar of collateral lost to the Trustee and Holders forever and a dollar that will never be available to make payments on the Secured Notes.

163. Because violations of cash controls cannot be undone, prospective and permanent relief from this Court is necessary to prevent their occurrence.

164. CEDA has already violated cash controls by diverting more than $12 million from the Deposit Accounts in order to repay the Re-Opening Lenders on March 21, 2019. Moreover, on or around April 15, 2019, the Casino's CFO told one Holder that CEDA may place cash that would otherwise be swept to Holders into a separate bank account as leverage to force a restructuring of its debt. That is precisely what happened—and what this Court enjoined—in 2013.

165. CEDA has further threatened to continue disguising distributions to Tribal members as O&M Cost withdrawals to siphon cash from the Deposit Accounts. The Casino's General Manager told the same Holder on or around May 28, 2019 that CEDA felt it could always use "bonus" payments to make distributions to the Tribe.

166. CEDA's and the Affiliated Lender's entry into the 2019 DACA, which the Trustee did not learn of until June 25, 2019, was another attempt to gain control over the cash collateral that should be subject to the Trustee's perfected security interest and control.

167. The Trustee has made significant efforts to protect the collateral and partially mitigate CEDA's cash control violations. On June 21, 2019, the Trustee sent Rabobank a special instruction letter pursuant to the 2015 DACA, directing Rabobank to take instructions solely from the Trustee, except with respect to withdrawals for the Casino's O&M Costs and Tribal Distributions. CEDA responded by issuing conflicting instructions under the 2019 DACA on June 25, 2019.

168. The 2019 DACA directly conflicts with the 2015 DACA, to which CEDA remains a party. Under Section 8(a) of the 2015 DACA, CEDA "may not terminate this Agreement except with written consent of the [Trustee]," which has not been given. Under Section 12 of the 2015 DACA, "[n]o amendment of this Agreement will be binding unless it is in writing and signed by [CEDA], [the Trustee] and [Rabobank]," which has not happened.

169. The 2019 DACA states that Rabobank "ha[d] not received notice of any currently effective lien or encumbrance on or other claim" to the Deposit Accounts. As a party to the 2015 DACA, CEDA knew this to be inaccurate, but agreed to the 2019 DACA anyway.

170. Rabobank correctly recognized that the 2015 DACA controls. As such, it has agreed to honor the Trustee's instructions and has rescinded the 2019 DACA. But this does not provide complete relief to the Trustee and Holders, because CEDA has the ability to divert or withhold cash from the Deposit Accounts entirely. The fact that Rabobank is following the Trustee's instructions only makes it more likely that CEDA will try an end-run and divert cash

from the Deposit Accounts, as it did in 2013 and again in connection with the Sham Refinancing Scheme.

171. Moreover, CEDA continues to assert that the 2019 DACA remains valid and controlling, insisting that Rabobank may not comply with the Trustee's instructions and that Rabobank remains subject to the 2019 DACA. CEDA claims that the Trustee has violated the Intercreditor Agreement by issuing the Notice of Default and special instructions to Rabobank.

172. CEDA has threatened litigation seeking to give it control over the cash in the Deposit Accounts and has hired a New York-based litigation firm to, on information and belief, pursue claims against the Trustee and Holders.

173. Finally, CEDA has clearly stated its intention to cease Secured Note payments in the future. On information and belief, CEDA and the Tribe do not have sufficient cash to pay a damages award in this matter. Nor will they ever, if they continue to violate cash controls and dissipate the cash that is required to be held in the Deposit Accounts. The only way for the Trustee and Holders to be made whole is if CEDA is ordered to put the required cash in the Deposit Accounts and Defendants are ordered not to make unlawful withdrawals from those Deposit Accounts.

174. Ultimately, the Trustee and Holders simply want to return to the status quo put in place by the parties' agreements, wherein the Casino's cash is placed into the Deposit Accounts and used to fund the Casino's operations, make permitted monthly Tribal Distributions and make payments on the Secured Notes. Given the intransigence of the Defendants, only injunctive relief from this Court can force that to happen and avoid irreparable harm to the Trustee and Holders.

CAUSES OF ACTION

COUNT I
Breach of Contract – Indenture

(Against All Defendants)

175. The Trustee repeats and incorporates the allegations set forth above as if set forth fully herein.

176. The Trustee, the Tribe and CEDA entered into the Indenture, pursuant to which CEDA agreed to make payments on the Secured Notes and CEDA and the Tribe agreed to grant the Trustee and the Holders certain rights.

177. The Trustee performed its obligations under the Indenture at all times before CEDA's breaches.

178. The Tribe, along with and through CEDA and the Affiliated Lender, breached the Indenture by:

a. failing to make payments of principal and interest on the Secured Notes when due in violation of Sections 6.1(1) and 6.1(2) of the Indenture;

b. violating Section 4.25 of the Indenture by diverting cash from, or otherwise failing to deposit all Gross Revenues, other than Operating Cash and Excluded Assets, into Deposit Accounts subject to a security interest in favor of the Holders;

c. cross-defaulting under Section 6.1(5) of the Indenture by distributing money out of the Deposit Accounts in violation of the Disbursement Agreement;

d. violating Section 4.24 of the Indenture by having the Affiliated Lender impose a payment obligation on CEDA, subordinating the Secured

Notes in a manner materially adverse to the Holders and asserting that the Indenture is not legally enforceable;

e. failing to operate the Casino in good faith as required by Section 4.28 of the Indenture;

f. violating Section 8.2 of the Indenture by unilaterally changing the maturity of the Secured Notes, extending the time for the payment of interest on the Secured Notes, impairing the Holders' rights to receive payment on the Secured Notes or institute suit for the enforcement of payment and subordinating the Secured Notes without the Holders' consent;

g. incurring indebtedness prohibited by Section 4.10 of the Indenture; and

h. taking actions sufficient to call Tribal Defaults under the Indenture, including by failing to make payments of interest and principal on the Secured Notes when due, at a time when CEDA had the funds to make such payments, and by violating Section 4.24 of the Indenture.

COUNT II
Breach of Contract – Security Agreement

(Against CEDA)

179. The Trustee repeats and incorporates the allegations set forth above as if set forth fully herein.

180. The Trustee and CEDA entered into the Security Agreement, pursuant to which CEDA pledged the Casino's cash and revenues, among other items, as collateral for the Secured Notes, and agreed to deposit the collateral into the Deposit Accounts.

181. The Trustee performed its obligations under the Security Agreement at all times before CEDA's breaches.

182. CEDA breached the Sections 2.1(m), 4.4.4(b) and 4.9 of the Security Agreement by failing to deposit the Casino's cash and revenues into the Deposit Accounts and seeking to deprive the Trustee of its security interest over the Casino's cash and revenues.

183. As a direct and proximate result of these breaches, the Trustee, on behalf of itself and the Holders, has suffered harm.

COUNT III
Breach of Contract – Intercreditor Agreement

(Against CEDA)

184. The Trustee repeats and incorporates the allegations set forth above as if set forth fully herein.

185. UMB Bank (as Re-Opening Loan Collateral Agent) and the Trustee entered into the Intercreditor Agreement, acknowledged and agreed to by CEDA, to govern the relationship established among the Holders and the Re-Opening Lenders. CEDA agreed not to attempt to refinance the Re-Opening Loans except in accordance with the terms of the Intercreditor Agreement.

186. The Trustee performed its obligations under the Intercreditor Agreement at all times before CEDA's breaches.

187. CEDA breached the Intercreditor Agreement by:

a. purporting to accomplish a refinancing that does not comply with Section 5.3(a) of the Intercreditor Agreement or Section 4.10 of the Indenture; and

b. violating Section 5.3(c) of the Intercreditor Agreement by modifying the Credit Agreement Collateral Documents to subordinate the Holders' right of payment on the Secured Notes.

188. As a direct and proximate result of these breaches, the Trustee, on behalf of itself and the Holders, has suffered harm.

COUNT IV
Breach of Contract – Forbearance Agreement

(Against CEDA and the Tribe)

189. The Trustee repeats and incorporates the allegations set forth above as if set forth fully herein.

190. CEDA, the Tribe, the Trustee, Wells Fargo (as depository agent) and the Holders entered into the Forbearance Agreement. Under this agreement, the Trustee and Holders agreed to forbear from exercising remedies for CEDA's past and ongoing defaults so long as the Re-Opening Loan obligations were owed to the Re-Opening Lenders.

191. The Trustee performed its obligations under the Forbearance Agreement at all times before CEDA's breaches.

192. CEDA and the Tribe breached the Forbearance Agreement by:

a. failing to make Secured Note payments via cash sweeps required by Section 5.13(e) of the Re-Opening Credit Agreement and planning to cease making such payments in violation of Section 5.11(e) of the Affiliated Credit Agreement;

b. making Secured Note payments based on cash accounting and cash availability rather than payments based on financial accounting, as required by Section 5.13(e) of the Re-Opening Credit Agreement;

c. attempting to release CEDA from its obligations under the Indenture.

193. As a direct and proximate result of these breaches, the Trustee, on behalf of itself and the Holders, has suffered harm.

COUNT V
Breach of Contract – 2015 DACA

(Against CEDA)

194. The Trustee repeats and incorporates the allegations set forth above as if set forth fully herein.

195. CEDA, the Trustee and Rabobank entered into the 2015 DACA, pursuant to which the Trustee has a perfected security interest in and control over the collateral in the Deposit Accounts.

196. The Trustee performed its obligations under the 2015 DACA at all times before CEDA's breaches.

197. CEDA breached the 2015 DACA by entering into the conflicting 2019 DACA without terminating or amending the 2015 DACA, and by attempting to issue instructions to Rabobank pursuant to the 2019 DACA that would deprive the Trustee of its perfected security interest in and control over the Deposit Accounts under the 2015 DACA.

198. As a direct and proximate result of these breaches, the Trustee, on behalf of itself and the Holders, has suffered harm.

COUNT VI
Breach of Covenant of Good Faith and Fair Dealing

(Against CEDA and the Tribe)

199. The Trustee repeats and incorporates the allegations set forth above as if set forth fully herein.

200. CEDA and the Tribe each have obligations to the Trustee and Holders under the Indenture, Security Agreement, Re-Opening Credit Agreement, Intercreditor Agreement, Forbearance Agreement and 2015 DACA.

201. The foregoing acts by CEDA and the Tribe, to the extent they do not constitute breaches of express provisions of those agreements, deprived the Trustee and Holders of the right to receive benefits under those agreements, in violation of the covenant of good faith and fair dealing implied in every contract.

202. The Trustee and Holders reasonably believed these benefits were included in the agreements.

203. As a direct and proximate result of these breaches of the covenant of good faith and fair dealing, the Trustee, on behalf of itself and the Holders, has suffered harm.

COUNT VII
Declaratory Judgment – Forbearance Is No Longer in Effect

204. The Trustee repeats and incorporates the allegations set forth above as if set forth fully herein.

205. An actual, justiciable controversy exists between the Trustee and Defendants within the meaning of CPLR § 3001, which provides the Trustee with a vehicle by which to seek a declaratory judgment from this Court. Based on the foregoing facts, including that CEDA has repaid the Re-Opening Lenders and has not consummated a valid Refinancing under the Intercreditor Agreement or Indenture, the Trustee is entitled to a declaratory judgment that forbearance under the Forbearance Agreement is no longer in effect and the Trustee is permitted to exercise remedies for all past and planned defaults by CEDA and the Tribe under the Indenture and related agreements.

COUNT VIII
Declaratory Judgment – Future Note Payments

206. The Trustee repeats and incorporates the allegations set forth above as if set forth fully herein.

207. An actual, justiciable controversy exists between the Trustee and Defendants within the meaning of CPLR § 3001, which provides the Trustee with a vehicle by which to seek a declaratory judgment from this Court. Based on the foregoing facts, including CEDA's stated intention to cease paying principal and interest due on the Secured Notes in perpetuity, the Trustee is entitled to a declaratory judgment that CEDA is required to make payments of principal and interest on the Secured Notes as they become due pursuant to the Indenture, including via cash sweeps.

COUNT IX
Declaratory Judgment – Cash Controls

208. The Trustee repeats and incorporates the allegations set forth above as if set forth fully herein.

209. An actual, justiciable controversy exists between the Trustee and each of Rabobank, CEDA and the Tribe within the meaning of CPLR § 3001, which provides the Trustee with a vehicle by which to seek a declaratory judgment from this Court. Based on the foregoing facts, the Trustee is entitled to a declaratory judgment that Defendants are obligated to follow all cash controls agreed upon by the parties, including the requirement to place the Casino's cash and revenues into the Deposit Accounts at Rabobank and the requirement not to improperly withdraw or dissipate cash in the Deposit Accounts.

COUNT X
Declaratory Judgment – DACA Validity

210. The Trustee repeats and incorporates the allegations set forth above as if set forth fully herein.

211. An actual, justiciable controversy exists between the Trustee and each of Rabobank, CEDA and the Tribe within the meaning of CPLR § 3001, which provides the Trustee with a vehicle by which to seek a declaratory judgment from this Court. Based on the foregoing facts, the Trustee is entitled to a declaratory judgment that the 2015 DACA is valid, while the 2019 DACA and any instructions issued pursuant to it are invalid.

COUNT XI
Declaratory Judgment – Conditions Sufficient to Issue a Notice of Tribal Default

212. The Trustee repeats and incorporates the allegations set forth above as if set forth fully herein.

213. An actual, justiciable controversy exists between the Trustee and Defendants within the meaning of CPLR § 3001, which provides the Trustee with a vehicle by which to seek a declaratory judgment from this Court. Based on the foregoing facts, including CEDA's intentional failure to pay interest or principal under the Secured Notes when such amounts were due and it had available funds, and the Affiliated Lender's imposition of a payment obligation on CEDA, the Trustee is entitled to a declaratory judgment that conditions sufficient to trigger Tribal Defaults have occurred and are ongoing, giving the Trustee the right to issue a Notice of Tribal Default to Rabobank.

Prayer for Relief

WHEREFORE, the Trustee respectfully requests that this Court enter judgment in its favor and against Defendants on the Complaint and enter an order as follows:

a. awarding the Trustee monetary damages, according to proof at trial;

b. declaring that forbearance is no longer in effect, giving the Trustee and Holders the right to exercise remedies for Defendants' defaults;

c. declaring that CEDA must pay interest and principal on the Secured Notes when due, including via semi-annual cash sweeps;

d. declaring that Defendants must follow all cash controls agreed upon by the parties;

e. directing CEDA to deposit all of the Casino's cash and revenues into the Deposit Accounts;

f. declaring that the 2015 DACA is valid, while the 2019 DACA and any instructions issued pursuant to it are invalid;

g. enjoining CEDA and the Tribe from issuing instructions to Rabobank under the 2019 DACA or seeking to withdraw cash from the Deposit Accounts in contravention of the Trustee's instructions under the 2015 DACA;

h. declaring that conditions sufficient to trigger a Tribal Default have occurred and are ongoing, giving the Trustee the right to issue a Notice of Tribal Default to Rabobank;

i. enjoining Defendants from withdrawing any funds for Tribal Distributions following the Trustee's delivery of a Notice of Tribal Default to Rabobank;

j. granting the Trustee's attorneys' fees and costs, as permitted under Section 7.7 of the Indenture; and

k. granting such other relief as the Court deems just and proper.

Dated: July 17, 2019
New York, New York

LATHAM & WATKINS LLP

By: /s/ Robert J. Malionek

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